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In the Supreme Court of the United States

OCTOBER TERM, 1965.

No. 913.

INTERNATIONAL ASSOCIATION OF MACHINISTS, ETC.,
Petitioners,

vs.

THE JEFFREY GALION MANUFACTURING COMPANY,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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THE JEFFREY GALION MANUFACTURING COMPANY,

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

QUESTIONS PRESENTED.

Whether the decision of a state court of competent jurisdiction, from which no appeal was taken, which accepts the opinion and findings of an impartial arbitrator on matters which are within the terms of the submission agreement while rejecting the arbitrator's award as being beyond the scope of that agreement, is res adjudicata, precluding a labor union from utilizing the medium of a second suit in a Federal court to obtain a re-arbitration of the same grievances.

STATEMENT OF THE CASE.

During the term of a collective bargaining agreement entered into between the petitioner and the respondent on November 19, 1956, the petitioner, on behalf of certain employees of the respondent, filed with the respondent the two grievances here in question, specifying that they were based on alleged violations of Article IX, Section 8 of the

agreement. (App. 4a-7a.)* The grievances were submitted to arbitration and the arbitrator rendered an Opinion and Findings in which he found that Article IX, Section 8, the only section of the agreement relied upon by the petitioner, had not been violated. (App. 15a.) Despite this finding in his Opinion in favor of the respondent, the arbitrator went on to grant an award of back pay to the grievants. (App. 19a.)

The respondent then filed a petition in the Common Pleas Court of Franklin County, Ohio, to vacate the Award of the arbitrator. In its decision, the Common Pleas Court pointed out that the express terms of Article XI, Section 4, c. of the collective bargaining agreement required the arbitrator "to confine himself to the issues before him." (App. 51a.) The court also observed that the Opinion and Findings of the arbitrator were that Article IX, Section 8 of the agreement had not been violated by the respondents. (App. 51a.) Concluding that the arbitrator, in granting the award of back pay, had exceeded his authority by going beyond the issues submitted to him for decision, the court accepted the Opinion and Findings of the arbitrator which were within the terms of the submission, vacated the Award, and granted judgment for the respondent. (App. 52a.) The petitioner's motions to modify the court's decree and for a new trial were overruled and no appeal from that decree was thereafter taken.

The petitioner then brought suit in the United States District Court, Southern District of Ohio, to compel rearbitration of the same grievances that had been before the arbitrator and the Ohio Common Pleas Court. The District

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* References to "App. __a" are to the page number of the appendix to the petitioner's brief as plaintiff-appellant in the Court of Appeals.

Court granted the respondent's motion for summary judgment on the grounds of res adjudicata and estoppel by judgment, and this judgment was affirmed on appeal by the United States Court of Appeals for the Sixth Circuit.

REASONS FOR REFUSING THE WRIT.

I. The Decision of the Arbitrator Is Final With Respect to Matters Within the Scope of the Submission.

Article XI, Section 4, c. of the collective bargaining agreement between the petitioner and the respondent directs that:

> "The arbitrator shall confine himself to the issues before him and his decision shall be final and binding on the parties."

Therefore, the petitioner itself has expressly agreed by contract that the arbitrator's decision, so far as he acts within the scope of his authority, is final and binding on the parties.

Even if the petitioner had not expressly so agreed, the law is clear that the decision of the arbitrator is final as to matters within the scope of the submission agreement. *Retail Clerks Ass'n v. Lion Dry Goods, Inc.*, 341 F.2d 715, 720 (6th Cir. 1965); *Local 63, Textile Workers Union v. Cheney Bros.*, 141 Conn. 606, 617, 109 A.2d 240, 244 (1954), *cert. denied* 348 U.S. 959 (1955); *General Exch. Ins. Corp. v. Harmon*, 288 Ky. 624, 628, 157 S.W.2d 126, 127-28 (1941); 5 AM. JUR. 2d *Arbitration & Award* § 147 (1962). The sole question submitted to the arbitrator was whether or not the company had violated Article IX, Section 8 of the collective bargaining agreement. Since the arbitrator found for the respondent on that question, the only one properly before him, the Opinion and Find-

ings of the arbitrator on that point are final and stand unchallenged.

The arbitrator's authority is limited by the terms of the submission agreement. Any action by the arbitrator in excess of that authority is void. *Truck Drivers Union v. Ulry-Talbert Co.*, 330 F.2d 562, 563, 565-66 (8th Cir. 1964); *Local 1078, UAW v. Anaconda Am. Brass Co.*, 149 Conn. 687, 689, 183 A.2d 623, 625 (1962); *Local 63, Textile Workers Union v. Cheney Bros.*, 141 Conn. 606, 613, 109 A.2d 240, 244 (1954), *cert. denied* 348 U. S. 959 (1955); *Carr v. Kalamazoo Vegetable Prod. Co.*, 354 Mich. 327, 331-32, 92 N.W.2d 295, 296-97 (1958); 5 AM. JUR. 2d *Arbitration & Award* §§ 124, 137 (1962). The arbitrator went beyond the terms of the submission agreement by granting the award of back pay and his actions in doing so were void. As it is proper to vacate that portion of an arbitrator's decision which exceeds his authority, leaving intact that portion which represents a valid exercise of his authority, the Common Pleas Court was correct in vacating the Award in favor of the petitioner, which the arbitrator arrived at by exceeding his authority, and leaving the decision in favor of the respondent as to the alleged violation of the contract. *Local 791, Int'l Union of Elec. Workers v. Magnavox Co.*, 286 F.2d 465, 466 (6th Cir. 1961).

Since state courts have concurrent jurisdiction with federal courts in matters involving enforcement of collective bargaining agreements, it was proper for the order vacating the void award to emanate from a state tribunal. *Smith v. Evening News Ass'n.*, 371 U.S. 195 (1962).

II. The Decisions of the Courts Below Are Not in Conflict With the Steelworkers Trilogy.

The *Steelworkers* cases involved an outright refusal by the employer to arbitrate the grievances in question. Here, the employer not only did not refuse to arbitrate the grievances, but the arbitration was carried out to a final and binding decision in favor of the employer on the sole issue submitted to the arbitrator. The fact that the result of the arbitration was unfavorable to the petitioner does not grant the petitioner the right to re-arbitrate the same grievances by resorting to another forum for the re-presentation of its case.

In fact, it is the respondent's position that is most consistent with the three *Steelworkers* cases. The common thread of those three cases is the desirability of arbitration as a method of settling industrial disputes with the arbitrator's decision on the merits being final and decisive, and the role of the courts being limited to determining which questions are subject to arbitration and which are not. *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 568 (1960); *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 583 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596, 598-99 (1960). That is precisely the role adopted by the lower courts in this case. No interpretation of those decisions will support the petitioner's contention that the courts herein undertook to determine the merits of the grievances under the guise of interpreting the arbitration clause of the contract or put themselves in the position of overruling the arbitrator because their interpretation of the contract differed from his. To the extent that the arbitrator remained within the terms of the submission agreement his Opinions and Findings were not disturbed by the courts

below. No attempt was made to weigh and decide the merits of the grievances. The findings of the arbitrator in this respect were adopted by the lower courts without question. Questions of contract interpretation, as determined by the arbitrator, were left unchanged. The question of whether or not the arbitrator had the power, under the contract and submission, to make the Award which he made was the sole question determined by the courts below. This is in full accord with the decisions of this Court in the *Steelworkers* cases.

III. The Doctrines of Res Adjudicata and Estoppel by Judgment Operate as a Defense to the Petitioner's Claim.

The doctrine of res adjudicata has been accepted and followed consistently by this Court since the decision in *Hopkins v. Lee*, 19 U.S. (6 Wheat.) 109, 113 (1821). In *Cromwell v. County of Sac*, 94 U.S. 351 (1877), Mr. Justice Field stated the rule for the Court as follows:

> "[T]he judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."
>
> 94 U.S., at 352-53.

This statement of the doctrine of res adjudicata has been cited with approval in numerous cases decided by this Court: *Lawlor v. National Screen Serv. Corp.*, 349 U.S. 322, 326 (1954); *Partmar Corp. v. Paramount Pictures Theatres Corp.*, 347 U.S. 89, 90-91 (1954), *rehearing denied*, 347 U.S. 931 (1954); *Grubb v. Public Util.*

Comm'n, 281 U.S. 470, 479 (1930); *United States v. Moser*, 266 U.S. 236, 241 (1924); *Southern Pac. R.R. v. United States*, 168 U.S. 1, 49 (1897); *Johnson Co. v. Wharton*, 152 U.S. 252, 258 (1894); *Mason Lumber Co. v. Buchtel*, 101 U.S. 638, 639 (1880).

The basic principle of estoppel by judgment is similar to that of res adjudicata although estoppel by judgment has a more limited effect. In *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316 (1927), Mr. Justice Sutherland characterized res adjudicata and estoppel by judgment as follows:

> "The effect of a judgment or decree as res adjudicata depends upon whether the second action or suit is upon the same or a different cause of action. If upon the same cause of action, the judgment or decree upon the merits in the first case is an absolute bar to the subsequent action or suit between the same parties or those in privity with them, not only in respect of every matter which was actually offered and received to sustain the demand, but also as to every ground of recovery which might have been presented. But if the second case be upon a different cause of action, the prior judgment or decree operates as an estoppel only as to matters actually in issue or points controverted, upon the determination of which the judgment or decree was rendered."
>
> 274 U.S., at 319.

Alternatively, the rule has been stated in the following manner:

> "The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties

or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified."

United States v. Moser,
266 U.S. 236, 241 (1924);
Southern Pac. R.R. v. United States,
168 U.S. 1, 48-49 (1897).

"The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even although there be different demands, when the question upon which the recovery of the second demand depends has, under identical circumstances and conditions, been previously concluded by a judgment between the parties or their privies."

United States v. Moser,
266 U.S. 236, 241-42 (1924);
City of New Orleans v. Citizens' Bank,
167 U.S. 371, 396 (1897).

These rules are applicable in the instant case. The basic issue raised by petitioner's grievances was whether or not the respondent company had violated Article IX, Section 8, of the agreement between the parties. This issue was decided initially by the arbitrator, who found in favor of the respondent. The Opinion and Findings of the arbitrator were accepted and adopted by a state court of competent jurisdiction. These Findings, having been made part of the judgment of that court, are conclusive in all subsequent controversies between the same parties relating to these grievances. *Mason Lumber Co. v. Buchtel,* 101 U.S. 638, 639 (1880). Therefore, although the respondent contends, as held by the courts below, that the judgment of the Ohio Common Pleas Court is res adjudicata in this case, even if it be determined that the peti-

tioner's demand in its federal action differs from that in the previous state action, the determinative question upon which the petitioner's demand depends has been previously concluded by a judgment between the parties and the doctrine of estoppel by judgment is applicable.

CONCLUSION.

The District Court and Court of Appeals properly found the final judgment of the Ohio Common Pleas Court to be res adjudicata as to the issues sought to be raised by petitioner in its Federal action. Summary judgment was, therefore, properly granted to respondent by the District Court.

For these reasons, the petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit should be denied.

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